

THE SENTENCING REFORM ACT AT CENTURY'S END

**An Assessment of Adult Felony Sentencing Practices
in the State of Washington**

**REPORT TO THE GOVERNOR
AND THE LEGISLATURE**

January 2000



STATE OF WASHINGTON
**SENTENCING
GUIDELINES
COMMISSION**

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Sentencing Guidelines Commission**

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EXECUTIVE SUMMARY

Before the Sentencing Reform Act went into effect, many perceived the indeterminate sentencing system to be unjust and fiscally irresponsible. The Act has since helped to bring about the sense of predictability, uniformity and transparency that is necessary to engender more public support for the criminal justice process. Sentencing guidelines have resulted in a significant reduction in disparities in the sentencing of offenders. Although certain elements of the structured sentencing system remain controversial, and although the Sentencing Guidelines Commission continues to recommend further modifications to the system, the Commission reaffirms its support of the basic principle of determinate sentencing.

The balance between the stated purposes of the Act has shifted over the years, reflected by numerous legislative amendments to the Act and by citizen initiatives. Where a driving force for the original enactment was an emphasis on proportionality and justice, some recent legislative amendments have provided for more rehabilitative options. Today, there is more of a balance in addressing *all* of the Act's stated goals, and the Commission hopes that balance will be preserved as the Legislature continues to amend the Act and as the judiciary applies the Act in individual cases.

Changes to sentencing law over the years have generally resulted in the growth of the prison population and in the lengthening of prison terms, which has put upward pressure on the amount of resources needed to deal with that increasing population. In addition, the Act itself has become increasingly complex, which has arguably reduced public understanding of the law and may have compromised the ability of criminal justice practitioners to implement the law effectively. It is incumbent on the Commission to consider whether the Act's stated purposes remain suitable for current sentencing practice and whether some of the purposes should be modified or eliminated.

- **Proportional Punishment**

The original purpose of sentencing reform was to shift the emphasis from rehabilitation to proportionality, equality and justice. Recent legislative amendments to the Act, however, have somewhat shifted the balance between proportionality and rehabilitation, particularly with regard to drug offenders and to offenders who are supervised in the community.

The standard for proportionality is determined by the Legislature through statute and also by the citizens through the initiative process. However, as the Sentencing Reform Act has been amended numerous times over the years, the Commission believes it is important to examine how changes in sentencing law relate to the proportionality that was established at the time the original sentencing structure was put into place.

Legislative amendments to the rules for "scoring" an offender's criminal history have led some to conclude that sentences are often disproportionate to the offenses, particularly with regard to drug offenses. The Commission has considered whether some of the punishments for drug offenses are out of proportion to the seriousness of those offenses, and the Commission will be examining whether a new approach is necessary to deal with drug crime in general.

- **Justice and Respect for the Law**

As a goal of felony sentencing, the concept of justice is fundamental and essential to the system's integrity. Public approval of the justice system cannot be over-emphasized. In that regard, the extensive participation by citizens and by stakeholders in the justice system in formulating the original Sentencing Reform Act, and the continual evaluation of the Act by the Commission and the Legislature, has enhanced public acceptance of the system, rendering it more "just."

The operation of the Act is seen by some to be arbitrarily uniform, giving some judges the opportunity to "hide" behind the structure of limited discretion and to avoid engaging in a searching analysis of each case, particularly where the vast majority of cases are resolved through plea agreements. The Commission continues to discuss the merits of published prosecutorial standards in each county in the state, which might help to create the predictability needed to foster a higher level of public acceptance of the plea agreement process. Given the limited resources available to local governments, however, it would be difficult for many counties to implement such standards.

- **Commensurate Sentencing of Similar Offenders**

Commensurate sentencing minimizes disparities in sentences for offenders with the same criminal history who commit the same offense. It is important to remember that the Act is not a pure model, however, and that categorical exceptions to the determinate system have been included from the beginning, allowing more room for discretion for certain offenses and circumstances,

Limits to judicial discretion have arguably given rise to increased discretion of other players in the criminal justice process, particularly prosecutors. However, it is instructive to note that before the Act prosecutors had even more discretion, so the Act has helped to structure the decision making of all parties.

Risk has been added as a key factor in classifying and supervising certain offenders, and courts may consider an offender's risk to community safety when exercising discretion in sentencing. There is some concern that this might result in disparities in the sentencing of offenders, but it is important to recognize that risk-based management of offenders *after* sentencing, mandated by the Offender Accountability Act, dictates treatment of offenders that is commensurate with their needs and their risk to public safety, as distinguished from the commensurate sentencing of "like" offenders.

The Commission is troubled by the problem of over-representation of minorities in the criminal justice system. Many racial and/or ethnic disparities have arisen well before the time of sentencing, however, and therefore, there is not only a need to examine disparities in sentencing, but also to focus on other points of discretion arising earlier in the justice process. The Commission will continue to monitor racial and other disparities in sentencing as well as at other points in the criminal justice system.

The Commission is concerned that offenders with English language difficulties may receive disparate treatment because of communication problems during the adjudication and sentencing

process, and also because of scarce resources available to attend to those offenders' needs. Understanding the severe resource constraints facing local governments, the Commission nevertheless encourages the provision of needed services in court systems that often deal with the problems of offenders facing language barriers.

- **Protection of the Public**

Since the Act went into effect, more violent offenders have been sentenced to prison, and for longer periods. This has arguably contributed to enhanced public safety. In addition, the new focus on managing offenders based on their risk of re-offending, brought about by the passage of the Offender Accountability Act in 1999, will help dictate the type and intensity of supervision of offenders in the community, which should enhance public safety by reducing the rates of re-offending.

The operation of the Act initially resulted in an increase in jail populations, requiring confinement of offenders who had previously remained in the community. Since 1990, however, amendments to the Act by the Legislature and by citizen initiatives have affected state prison populations, not local jail populations. Nevertheless, the Commission is concerned about the capacity shortage in the jails, an ongoing, chronic problem that has hampered efforts by local law enforcement to protect public safety.

As the Offender Accountability Act is implemented, some offenders will be more closely supervised in the community and will likely be sanctioned more frequently for violating conditions. The potential impact on jail capacity will likely be mitigated, however, as the Department of Corrections is mandated to create a range of graduated sanctions for offenders, and not just confinement in jail. In addition, the intensive supervision will be targeted at high-risk offenders and not all offenders. The Department of Corrections will also be reimbursing local jails for use of their capacity, for such capacity that is in excess of the Department's historic usage of jail space.

The counties shoulder the burden of incarceration costs for all sentences of one year or less (jail sentences), and the Commission has considered whether a system of county-specific sentencing grids might provide a more effective means for counties to set standards and to plan and manage their own limited criminal justice resources. The Commission will continue to discuss whether the Act could be amended to permit county governments to establish their own local, determinate sentencing structures.

- **Offenders' Opportunities for Self-improvement**

The type of punishment specified by the sentencing guidelines has previously been limited to sentences of total confinement, a set duration of time spent in jail or prison. With the passage of the Offender Accountability Act in 1999, the sentencing guidelines now define both the duration *and* the location of control over certain offenders, with an understanding of the critical role that treatment (as risk reduction) plays during that period of control.

The Offender Accountability Act allows for the imposition of affirmative conditions on offenders, both in confinement *and in the community*, including rehabilitative treatment, and

also dictates that the supervision of offenders be based on risk. The goal of risk reduction now stands alongside the goals of punishment and incapacitation. The 1999 Legislature also reformed drug offender sentencing, including the authority to impose treatment on eligible offenders for a contributing risk factor that may not be an explicit element of the crime itself – drug dependency. This reform gives credence to the role of treatment, whether voluntary or involuntary, in reducing the likelihood of future criminal events, apart from the strict notion of “just deserts” in sentencing.

- **Frugal Use of State and Local Resources**

The Legislature has amended the Sentencing Reform Act in almost every legislative session, resulting generally in the lengthening of sentences, and citizen initiatives have also resulted in the imposition of longer prison terms. The state’s prison population has more than doubled in the last decade, and this has resulted in ever-greater expenditures by the state and local governments for the cost of corrections.

Despite the lengthening of felony sentences and the attendant growth in incarceration costs, the operation of the determinate sentencing system has allowed for better prediction of correctional costs. Knowing how much a statutory change will cost, the Legislature is obliged to make the necessary investments to pay for that change.

The Legislature has also made policy choices recently that will result in cost savings to the state, including drug offender sentencing reform and the Offender Accountability Act. The Commission strongly supports those initiatives and any other measures that will result in cost savings to the state and will promote the other goals of the Sentencing Reform Act, including proportionality, justice, equality, public safety and rehabilitation.

The inability to provide sufficient incarceration options at the *local* level is undermining the goals of the Sentencing Reform Act. The Commission believes that the ability to estimate the cost to local governments of changes to the sentencing system needs to be improved, particularly in regard to the quantification of local jail costs.

- **Reducing the Risk of Reoffending**

Reducing the risk of reoffending was added as a purpose of the Sentencing Reform Act with the enactment of the Offender Accountability Act. The notion of proportionality continues to dictate the duration of the punitive sanction, whether in jail, in prison or under supervision in the community, but the *content* of the sanction is now driven by the notion of *risk*. Risk is the criterion by which the Department of Corrections is to allocate its resources in supervising offenders. What was purely a sanction-based system before has now evolved into a system that balances “just deserts” with risk mitigation.

The concept of reducing risk implies some active attempt to lessen risk. In the Offender Accountability Act, risk refers to a range of factors and an instrument supported by research. The risk assessment instrument incorporates dynamic risk factors – those variables that are statistically correlated with crime as a characteristic of the individual offender or their circumstance, which can be changed. The dynamic factors become the basis on which specific

change interventions are identified and imposed and they are selected precisely because of their potential to mitigate risk. Attempts to mitigate risk will involve both crime-related prohibitions as well as the imposition of affirmative acts intended to change characteristics of offenders and their circumstances. Insofar as change interventions are directed at reducing risk they now are an explicit part of the Sentencing Reform Act. They now stand alongside other control strategies such as punishment and incapacitation.

The Commission will be closely following the implementation of the new regime and will monitor the extent to which the consideration of risk affects the other stated purposes of the Act, including proportionality, equality, public safety, rehabilitation and frugal use of resources.

COMMISSION WORKPLAN

In addition to its legislatively-mandated research studies, the Commission is required to make recommendations to the Legislature to revise or modify state sentencing policy and the criminal code. The Commission is directed to evaluate sentencing ranges and standards to ensure that they are consistent with and further the stated purposes of the Sentencing Reform Act, and also that they are consistent with correctional capacity. To fulfill those mandates, the Commission intends to pursue the issues identified in this report, and the Commission will also follow any directives from the Legislature enacted in the current and future legislative sessions.

THE SENTENCING REFORM ACT AT CENTURY’S END

An Assessment of Adult Felony Sentencing Practices in the State of Washington

HISTORICAL BACKGROUND

In 1981, the Washington State Legislature enacted the Sentencing Reform Act (“SRA”), which established the Sentencing Guidelines Commission and directed it to recommend to the Legislature a determinate sentencing system for adult felonies. Washington was one of the first states in the country to establish a determinate sentencing system. The principal goal of the new sentencing system was to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. Determinate sentences are for specified lengths of time, based on the seriousness of the crime of conviction and on the offender’s past conviction record.

The Sentencing Guidelines Commission crafted the original adult felony sentencing “grid” in 1982, and the Legislature enacted the Commission’s recommendations into law in 1983. The Sentencing Reform Act took effect for crimes committed on and after July 1, 1984. Codified in chapter 9.94A RCW, the SRA contains the guidelines and procedures used by the courts to impose sentences for adult felonies.¹ The Commission continues to advise the Legislature on necessary adjustments to the sentencing structure.

The Sentencing Reform Act did not eliminate judicial discretion in the sentencing of adult felony offenders. Rather, the Act provided a structure and guidance to the judiciary, allowing for consideration of the unique facts and circumstances of each case. Courts may sentence above or below the presumptive sentence range for an offense if there are “substantial and compelling” reasons to do so. In such cases, the reasons for a departure from the guidelines must be stated on the record, and such “exceptional” sentences are subject to appeal.² In addition to exceptional sentences, the Sentencing Reform Act provides courts with alternative sentencing options for certain categories of offenders, including sex offenders, drug offenders and first-time offenders.³

¹ Washington’s sentencing “grid” may be found in RCW 9.94A.310, and felony offenses are ranked by their level of seriousness in RCW 9.94A.320. The rules for “scoring” an offender’s history of prior convictions may be found in RCW 9.94A.360.

² “Exceptional” sentences are authorized under RCW 9.94A.120(2), and the standard of appellate review for exceptional sentences is articulated in RCW 9.94A.210. The Act also includes an illustrative, non-exclusive list of aggravating and mitigating factors that may justify a sentence that departs from the standard, presumptive range; see RCW 9.94A.390. A body of case law has developed over the years to guide judges further in the imposition of exceptional sentences.

³ The Special Sex Offender Sentencing Alternative (SSOSA), under RCW 9.94A.120(8), was established in 1984. The Drug Offender Sentencing Alternative (DOSA), under RCW 9.94A.120(6), was established in 1995, and eligibility for the DOSA option was expanded in 1999. The First-time Offender Waiver (FTOW), under RCW 9.94A.120(5), was part of the original Sentencing Reform Act.

Determinate vs. Indeterminate Sentencing

Prior to 1984, sentences imposed for felonies in Washington were indeterminate. Courts had wide discretion over whether or not to impose a prison sentence, but they could not specify the exact length of any sentence. The Board of Prison Terms and Paroles had the discretion over when or whether to release an offender, within the statutory maximum sentence period (which ranged from five years to life in prison, depending on the seriousness of the offense).⁴ Under the indeterminate system, no one knew how much time an offender would actually serve in prison.

Before the Sentencing Reform Act went into effect, many citizens and public officials perceived the indeterminate sentencing system to be unjust and fiscally irresponsible. Some believed that punishments were not properly in proportion to the crimes, as many judges were thought to be too harsh or too lenient, depending on the perspective. Significant disparities in sentencing also persisted, whereby offenders committing the same types of offenses were sentenced to longer terms in prison or shorter terms in jail, depending upon the county in which the offender was sentenced. In addition, the state government had only limited control over the use of correctional resources and only a limited ability to forecast prison populations, where the case-by-case decisions of judges and of the Board of Prison Terms and Paroles did not follow any predictable pattern. Finally, the decisions of the Board of Prison Terms and Paroles were not considered transparent enough and were seen by some to be potentially arbitrary or inconsistent.

In light of the deficiencies of the indeterminate sentencing system, the enactment of the Sentencing Reform Act in 1981 helped to bring about the sense of predictability, uniformity and transparency that was necessary to engender more public support for the criminal justice process. The new sentencing guidelines resulted in a significant reduction in disparities in the sentencing of offenders, as the system was designed to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. As stated in the Act, the guidelines apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or to the defendant's previous criminal record.⁵ The sentencing guidelines also established a set of punishments that were deemed more proportional to the crimes, as the felony sentencing "grid" was structured so that offenses involving greater harm to a victim and to society would result in greater punishment. Although certain elements of the structured sentencing system remain controversial, and although the Commission continues to recommend further modifications to the system, the Commission reaffirms its support of the basic principle of determinate sentencing.

⁴ The Board of Prison Terms and Paroles has been replaced by the Indeterminate Sentence Review Board (ISRB), which reviews the sentences of inmates whose offenses were committed before July 1, 1984 (the effective date of the SRA). As of January 31, 2000, there were 772 inmates still under the jurisdiction of the ISRB.

⁵ See RCW 9.94A.340.

Stated Purposes of the Sentencing Reform Act

The Sentencing Reform Act was enacted to help make the criminal justice system more accountable to the public by developing a sentencing structure that guides the use of judicial discretion. As stated in the original Act, the structured sentencing system is designed to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Ensure that the punishment imposed on any offender is commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself;
- (6) Make frugal use of the state's and local governments' resources; and
- (7) Reduce the risk of re-offending by offenders in the community.⁶

These guiding principles were not amended until 1999, when the Legislature added "local governments" to purpose (6), reflecting the need to consider the effect of the sentencing system on city and county governments, and also added purpose (7) in recognition of the increased utility of risk-based management of offenders. In its first report on the state of sentencing practice in Washington, published in 1996, the Sentencing Guidelines Commission recommended to the Legislature that those two purposes be stated in the Act.⁷

Since the enactment of the Sentencing Reform Act, the balance between the Act's stated purposes has shifted over the years, reflected by numerous legislative amendments to the Act and by citizen initiatives. For instance, where a driving force for the original enactment was an emphasis on proportionality and justice, some recent legislative amendments have provided for more rehabilitative options, particularly for drug offenders and for offenders being supervised in the community. The goals of proportionality, justice, equality, public safety, rehabilitation, efficiency and risk reduction often conflict with one another, but they are not exclusive of one another. Today, there is more of a balance in addressing *all* of the Act's stated goals, and the Commission hopes that balance will be preserved as the Legislature continues to amend the Act and as the judiciary applies the Act in individual cases.

⁶ See RCW 9.94A.010.

⁷ State of Washington, Sentencing Guidelines Commission, *Sentencing Policy in Washington: An Assessment*, January 1996, pp. 9 and 11.

EVALUATING THE STATED PURPOSES OF THE SENTENCING REFORM ACT

In the 16 years since the Sentencing Reform Act became effective, numerous significant changes have been made to the sentencing system through legislative amendments and through citizen initiatives. These changes have generally resulted in the growth of the prison population and in the lengthening of prison terms, which has put upward pressure on the amount of resources needed to deal with that increasing population. In addition, the many changes to the Act have resulted in the increasing complexity of the statute itself, which has arguably reduced public understanding of the law and may have compromised the ability of criminal justice practitioners to implement it effectively.

Although the original purposes of the Act have remained in the statutory language, it is incumbent on the Sentencing Guidelines Commission to consider whether those purposes remain suitable for current sentencing practice and whether some of the purposes should be modified or eliminated. During 1999, the Commission engaged in a year-long series of discussions over the stated purposes of the Sentencing Reform Act, examining current sentencing practices and evaluating the extent to which the purposes of the Act are being achieved. What follows is a summary of those discussions, as the Commission assessed sentencing practices in Washington with a view towards refining sentencing policy and enhancing the administration of justice.

1) PROPORTIONAL PUNISHMENT

The concept of proportionality embraces the proposition that the “punishment should fit the crime.” The Sentencing Reform Act and the case law interpreting it clearly state that punishment should relate only to the seriousness of the offense and to criminal history and not to variables that are not legally relevant.⁸ The Act has never been a pure model, however, as exceptions such as the First-time Offender Waiver and the Special Sex Offender Sentencing Alternative (SSOSA), which allow for a “disproportionately” lenient punishment, have been a part of the system since the beginning. The Act has always been a mixture of principle and pragmatism.

When enacting the Sentencing Reform Act in 1981, the Legislature’s intent was clear that the paramount purpose of the Act is for punishment.⁹ The original purpose of sentencing reform was to shift the emphasis from rehabilitation to proportionality, equality and justice.¹⁰ Rehabilitative treatment and its promise was supposed to be trumped by the primacy of proportionality. In view of recent legislative amendments to the Act, however, the balance between proportionality and rehabilitation has begun to shift again, particularly with regard to drug offenders and to offenders who are supervised in the community.

⁸ See, e.g., *State v. Gaines*, 122 Wn.2d 502, 859 P.2d 36 (1993), where the Supreme Court held that reasons for imposing an exceptional sentence must be consistent with the purposes of the SRA that punishment be proportionate to the seriousness of the offense and the offender’s criminal history.

⁹ The Washington Supreme Court reaffirmed the Legislature’s intent in this regard in *State v. Rice*, 98 Wn.2d 384, 393, 655 P.2d 1145 (1982).

¹⁰ See *State v. Barnes*, 117 Wn.2d 701, 710-711, 818 P.2d 1088 (1991).

1) PROPORTIONAL PUNISHMENT (cont.)

Some may disagree whether a particular punishment is proportionate to the offense, such as a lengthy prison sentence for the sale of a small amount of drugs, the inclusion of second degree robbery as a “strike” that could result in life imprisonment, or the suspension of sentences for certain sex offenders under the SSOSA program. However, the standard for proportionality is determined by the Legislature through statute; it is also determined by the citizens through the initiative process.¹¹ On the other hand, as the Sentencing Reform Act has been amended numerous times over the years, the Sentencing Guidelines Commission believes it is important to examine how changes in sentencing law relate to the proportionality that was established at the time the original sentencing structure was put into place.

Judicial discretion within the sentencing system offers an “escape valve” in the application of the sentencing guidelines in certain cases. If courts are seen ordering a large number of exceptional sentences, this can serve as a guide to imbalances in the system, where certain punishments are deemed to be disproportionate to the crimes. However, courts are often constrained from using their discretion to impose exceptional sentences, particularly with drug offenders, as the appellate courts and the Supreme Court have required sentencing judges to follow legislatively-mandated guidelines.¹² A widening of the standard sentence ranges would give courts more discretion, which would result in some increase in sentencing disparities, but the more important question is whether the sentencing guidelines properly inform discretion and whether the ground rules for the exercise of that discretion are sufficient.

Legislative amendments to the rules for “scoring” an offender’s criminal history have led some observers to conclude that sentences are often disproportionate to the offenses, particularly with regard to drug offenses.¹³ The Commission has considered whether the internal integrity of the entire sentencing grid has been upset to a certain extent, resulting in a lack of proportionality *within* the grid, due to changes in the scoring rules and to the establishment of various sentence “enhancements.”¹⁴ In addition, the courts have expressed concern that the expanding number and scope of aggravating circumstances justifying an “exceptional” sentence is potentially at odds with the underlying principle of proportionality in sentencing.¹⁵ The Commission continues to discuss whether changes in punishment should be effected through a change in the seriousness level of a crime rather than a change in the scoring rules or the addition of sentence enhancements or aggravating factors for exceptional sentences.

¹¹ See, e.g., Initiative 593, which established the nation’s first “Three Strikes and You’re Out” law, providing for life sentences without the possibility of release for three separate convictions of “most serious offenses.” See also Initiative 159, the so-called “Hard Time for Armed Crime” measure, which increased penalties for armed crimes, especially for firearms.

¹² See, e.g., *State v. Estrella*, 115 Wn.2d 350, 789 P.2d 289 (1990) and *State v. Harper*, 62 Wn. App. 69, 813 P.2d 593 (1991).

¹³ The 1989 Legislature amended the “scoring” rule in RCW 9.94A.360 to provide that, for a current drug offense, each prior adult drug conviction shall count for 3 points in the offender’s criminal history score and each prior juvenile drug adjudication shall count for 2 points. See the Omnibus Drug Act of 1989, SHB 1793 (Laws of 1989, c. 271 § 103).

¹⁴ The Sentencing Reform Act currently includes a number of sentence enhancements, including a range of enhancements for offenders armed with firearms and other deadly weapons, and enhancements for committing certain drug offenses while in correctional facilities and while in “protected zones,” such as schools, public parks, public transit stops, public housing projects and civic centers. See RCW 9.94A.310(3), (4), (5) and (6). In addition, the Legislature recently added a two-year sentence enhancement for each prior DUI-related offense when the current offense is vehicular homicide while under the influence of alcohol or drugs.

¹⁵ *State v. Way*, 88 Wn.App. 830, 946 P.2d 1209, rev. denied. 135 Wn.2d 1002, 959 P.2d 127 (1997).

1) PROPORTIONAL PUNISHMENT (cont.)

The Commission has considered whether some of the punishments for drug offenses are out of proportion to the seriousness of those offenses, and the Commission will be examining whether a new approach is necessary to deal with drug crime in general. There may be a need to distinguish between different types of drug crimes and drug offenders, and perhaps to establish a sliding scale or a series of degrees of drug crime to take account of the many distinctions. The Commission intends to focus some effort in the year 2000 on examining the issues related to drug crimes, evaluating the relative proportionality of drug sentences and also considering whether drug sentences serve the other purposes of the Sentencing Reform Act.

2) JUSTICE AND RESPECT FOR THE LAW

Justice implies equity and a process free of bias or favoritism. In the criminal justice system, and in society at large, we continue to strive towards justice, but never arrive at perfect justice.

As a goal of felony sentencing, the concept of justice is fundamental and essential to the system's integrity. Respect for the rule of law is promoted by a system of punishment that is *perceived* as just, and thus the need for public approval of the justice system cannot be over-emphasized. If justice is reflected in the will of the people, then the system will function properly. In that regard, the extensive participation by citizens and by stakeholders in the justice system in formulating the original Sentencing Reform Act, and the continual evaluation of the Act by the Commission and the Legislature, has enhanced public acceptance of the system, rendering it more "just."

Justice is closely linked with proportionality. A sense of injustice will arise if the punishment is perceived to be disproportionate to the offense. The strength of the system of sentencing guidelines derives from the need to consider and regularly reconsider issues of proportionality as they inform decisions as to what sentence is just and fair for a particular crime for an individual with a particular criminal history. Justice also embraces the concept of due process, also embodied in the Act. Justice is served if the rules of procedure are perceived to be fair and are faithfully followed.

The Sentencing Reform Act serves only a limited concept of justice, however, attending only to the issue of equity in the administration of punishment. Justice in the larger sense is framed around human relationships in general, which is beyond the scope of the Act. On the other hand, compared with the previous system of indeterminate sentencing, the Act does serve justice by providing a level of comfort with the predictability of sentencing outcomes. The perception and acceptance of equity and justice is more certain under the determinate sentencing system than under the previous indeterminate system.

The operation of the Act is seen by some to be arbitrarily uniform, giving some judges the opportunity to "hide" behind the structure of limited discretion and to avoid engaging in a searching analysis of each case, particularly where the vast majority of cases are resolved through plea agreements. Without plea agreements, the justice system would grind to a halt, but the predominance of plea agreements may affect the public's perception of the justice and

2) JUSTICE AND RESPECT FOR THE LAW (cont.)

fairness of the system.¹⁶ Accordingly, the Commission continues to discuss the merits of published prosecutorial standards in each county in the state. Because the justice system in Washington is decentralized, prosecutorial standards would naturally differ from county to county, but the publication of such standards might help to create the predictability needed to foster a higher level of public acceptance of the plea agreement process. Given the limited resources available to local governments, however, it would be difficult for many counties to implement such standards.

3) COMMENSURATE SENTENCING OF SIMILAR OFFENDERS

Commensurate sentencing minimizes disparities in sentences for offenders with the same criminal history who commit the same offense. In theory, “like” offenders will always receive “like” sentences under a structured, determinate system. It is important to remember, however, that the Sentencing Reform Act is not a pure model, and that categorical exceptions to the determinate system have been part of the Act from the beginning. More room for discretion is allowed for certain offenses and circumstances, thereby permitting the use of exceptional sentences, the First-time Offender Waiver and other exceptions.¹⁷

The Sentencing Reform Act never intended to eliminate judicial discretion, but merely to guide judicial discretion. Limits on judicial discretion have arguably given rise to increased discretion of other players in the criminal justice process, particularly prosecutors.¹⁸ It is instructive to note, however, that before the Act prosecutors had even *more* discretion, so the Act has helped to structure the decision-making of all parties. The Act does include guidelines for prosecutors’ charging and plea dispositions, although those guidelines are only recommended and are not mandatory. In any event, prosecutorial discretion is necessarily limited by the facts of each case and by what a prosecutor believes can be proven, as well as by the strictures of the sentencing grid.

With the recent passage of the Offender Accountability Act, *risk* has been added as a key factor in classifying and supervising certain offenders, and courts may consider an offender’s risk to community safety when exercising discretion in sentencing.¹⁹ Despite the fact that such risk assessments will be conducted by means of a research-proven, objective measurement, there

¹⁶ A number of commentators have decried the plea agreement process as anathema to the “just deserts” model of structured sentencing. See, e.g., Andrew Von Hirsch, *Doing Justice*, Boston: Hill and Wang (1976); and Albert Altschuler, “Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for ‘Fixed’ and ‘Presumptive’ Sentencing,” in *University of Pennsylvania Law Review*, vol. 126, p. 577 (1978).

¹⁷ The use of categorical exceptions has resulted in some sentencing disparities. For instance, Commission data from FY 1998 reveal that, of all white offenders eligible to receive the First-time Offender Waiver, approximately 37% were actually granted the waiver, and by contrast, only 25% percent of eligible African-American offenders were granted the waiver and only 22.5% of eligible Hispanic offenders were granted the waiver. Other studies of racial and ethnic disparities in sentencing include D. L. Hood and J. R. Harlan (1991), “Ethnic Disparities in Sentencing and the Washington Sentencing Reform Act: The Case of Yakima County,” in *Explorations in Ethnic Studies*, 14:43-55, and R. D. Crutchfield *et al.* (1993), *Racial/Ethnic Disparities and Exceptional Sentences in Washington State*, Washington State Minority and Justice Commission Report, September 1993.

¹⁸ This has been called “hydraulic discretion.” See Richard G. Singer, *Just Deserts: Sentencing Based on Equality and Desert*, Cambridge, Mass.: Ballinger Publishing Co., p. 123 (1979).

¹⁹ See RCW 9.94A.110.

3) COMMENSURATE SENTENCING OF SIMILAR OFFENDERS (cont.)

are some concerns that the consideration of risk at sentencing will result in disparate treatment of offenders. It is important to make the distinction, however, between the sentencing of offenders that is commensurate with the sentencing of similar offenders, and the risk-based management of offenders *after* sentencing, which is commensurate with the particular needs of those offenders and with the risk they pose to community safety. The Commission intends to follow closely how risk is considered in both the sentencing and management of offenders.

Although the sentencing grid was designed to be “race neutral,” the operation of the grid seems to result in disparate treatment of racial minorities, because criminal history, a key element determining a sentence, is highly correlated with race. The Act has therefore not eliminated *ex post* racial and ethnic disparities in sentencing, but the Act was not designed to redress the larger societal issues giving rise to such disparities. The Commission is troubled by the problem of over-representation of minorities in the criminal justice system, but it is important to recognize that racial and/or ethnic disparities have already arisen well before the time of sentencing. Therefore, the Commission believes it is not only important to monitor racial and other disparities in sentencing, but also to focus on the other points of discretion arising earlier in the criminal justice process.

The Commission is concerned that offenders with English language difficulties may receive disparate treatment because of communication problems during the adjudication and sentencing process, and also because of scarce resources available to attend to those offenders’ needs (such as treatment programs). Understanding the resource constraints facing local governments, the Commission nevertheless encourages the provision of needed services in court systems that often deal with the problems of offenders facing language barriers.

4) PROTECTION OF THE PUBLIC

The original emphasis of the Sentencing Reform Act – confinement of violent offenders – has arguably contributed to enhanced public safety. More violent offenders have been sentenced to prison, and for longer periods.²⁰ In addition to the confinement of violent offenders, the latest innovation in sentencing and corrections policy focuses on offenders’ risk of re-offending. The passage of the Offender Accountability Act in 1999 has put in place a new system of risk assessment of felony offenders, which will help dictate the classification of offenders who are in confinement and the type and intensity of supervision of offenders who are in the community.²¹ If executed properly, the risk-based management of offenders should enhance public safety and hopefully reduce the rates of re-offending in the community.

The enactment of the Sentencing Reform Act initially resulted in an increase in jail populations

²⁰ Sentencing Guidelines Commission data indicate that the average sentence length for those sentenced to prison has increased from 29.4 months in FY 1986 to 44.2 months in FY 1999.

²¹ E2SSB 5421 (ch. 196, Laws of 1999).

4) PROTECTION OF THE PUBLIC (cont.)

in the 1980s, requiring confinement of offenders who had previously remained in the community. Since 1990, however, the lengthening of sentences under the Act by the Legislature and by citizen initiatives has affected state prison populations, not local jail populations.²² Although there is a critical shortage of local jail capacity in many counties, it is not the direct result of changes to the Act in the last decade. Rather, jail overcrowding has been a function of increasing populations, local law enforcement policies and the lack of state and local funding for jail infrastructure improvements and for the housing and treatment of offenders with special needs.

The Commission is concerned about the capacity shortage in the jails, which has been an ongoing, chronic problem, worsened by recent legislative mandates related to driving-while-under-the-influence and to incidents of domestic violence. The pressures on the jails have hampered the efforts of local law enforcement to protect public safety. Many, if not most of the offenses giving rise to jail overcrowding and to booking restrictions are in the misdemeanor category, which is beyond the purview of the Commission. In any event, the jail overcrowding problem will persist and must be addressed in order to enhance public safety.

There are two special categories of felony offenders that are putting extra pressure on the jails – adult inmates awaiting trial and sentencing, and offenders sanctioned by the Department of Corrections for violating conditions of community custody. As the Offender Accountability Act is implemented, some offenders will be more closely supervised in the community and will likely be sanctioned more frequently for violating conditions. The potential impact on jail capacity will likely be mitigated, however, as the Department of Corrections is mandated to create a range of graduated sanctions for offenders, and not just confinement in jail. In addition, the intensive supervision will be targeted at high-risk offenders and not all offenders. The Corrections Department will also be reimbursing local jails for use of their capacity, for such capacity that is in excess of the Department’s historic usage of jail space.

One possible method to address the shortage of jail capacity and other resources on the local level would be the establishment of county-specific sentencing “grids.” Where each county shoulders the burden of incarceration costs for all sentences of one year or less (jail sentences), the Commission has considered whether a system of county-specific sentencing grids might provide a more fair and effective means for counties to set standards and to plan and manage their own limited criminal justice resources. Disparities in jail sentences among counties would probably result, but such disparities currently exist due to differences in local law enforcement and corrections policies. The Commission will continue to discuss whether the Act could be amended to permit county governments to establish their own local, determinate sentencing structures. In any event, there is a critical need for local governments to coordinate the management of their limited resources with their own sentencing practices, especially in the wake of the recent passage of Initiative 695, which has further limited the availability of criminal justice funding to local jurisdictions.

²² Christopher Murray & Assoc. and M. M. Bell, Inc., *The 1995 Capacity Study: Offender Placements in Washington State*, pp. 21-22 (1995).

5) OFFENDERS' OPPORTUNITIES FOR SELF-IMPROVEMENT

The Sentencing Reform Act as originally enacted focused primarily on “just deserts” and not on rehabilitation, but the Commission recommended in its 1996 report on sentencing practices that, in appropriate cases, offenders should be given more opportunities to improve themselves. In 1999, the Legislature enacted legislation towards that end – the Offender Accountability Act.

The Offender Accountability Act allows both courts and the state Department of Corrections to impose affirmative conditions on offenders, both in confinement *and in the community*, including rehabilitative treatment.²³ The Offender Accountability Act also dictates that the supervision of offenders be based on risk, so the goal of risk reduction now stands alongside the goals of punishment and incapacitation. The type of punishment specified by the sentencing guidelines had previously been limited to sentences of total confinement, a set duration of time spent in jail or prison. With the passage of the Offender Accountability Act, the sentencing guidelines now define both the duration *and* the location of control over certain offenders, with an understanding of the critical role that treatment (as risk reduction) plays during that period of control.

The 1999 Legislature also approved a measure to reform drug offender sentencing, which includes the authority to impose treatment on eligible offenders for a contributing risk factor that may not be an explicit element of the crime itself – drug dependency.²⁴ This reform gives credence to the role of treatment, whether voluntary or involuntary, in reducing the likelihood of future criminal events, apart from the strict notion of “just deserts” in sentencing. Total confinement is used as leverage for offenders’ involvement in treatment (consistent with the use of coercive authority by local drug courts), so punitive sanctions and rehabilitative treatment co-exist as key purposes of sentencing.

There are increasing opportunities for improvement for offenders in the community, but the Commission is concerned that the same level of opportunity is not afforded offenders in confinement. The Commission understands that the next step in the process of providing rehabilitative options to felony offenders will take place within the correctional institutions as well as in the community.

6) FRUGAL USE OF STATE AND LOCAL RESOURCES

The Legislature has amended the Sentencing Reform Act in almost every legislative session, requiring longer periods of confinement for violent offenders, sex offenders and drug offenders.²⁵ Citizen initiatives have also resulted in the imposition of longer prison terms, including longer sentences for armed offenders and also the nation’s first “three strikes” law. Where average prison terms have increased markedly in length, the state’s prison population

²³ See RCW 9.94A.120(11)(b) and (15)(b).

²⁴ See RCW 9.94A.129 and RCW 9.94A.380(3).

²⁵ See Appendix A – Memorandum from David L. Fallen, *Impact of Criminal Justice Legislation on Washington State’s Adult Inmate Population*, Caseload Forecast Council, January 31, 2000.

6) FRUGAL USE OF STATE AND LOCAL RESOURCES (cont.)

has more than doubled in the last decade.²⁶ This has resulted in ever-greater expenditures by the state and local governments for the cost of corrections.

Irrespective of the Legislature's lengthening of felony sentences and the attendant growth in incarceration costs, the operation of the determinate sentencing system has allowed for better prediction of correctional expenditures. Knowing how much a statutory change will cost, the Legislature is obliged to make the necessary investments to pay for that change. Accordingly, the Legislature has provided the needed funds for the construction of new prison beds. As to the local jails, the Legislature did authorize state bonding in the 1980s to support jail construction, although insufficient capacity was provided, given recent trends in the local jurisdictions.

The Legislature has also made policy choices recently that will result in cost savings to the state, including the drug offender sentencing reform measure and the Offender Accountability Act, both enacted in 1999. The Commission strongly supports those initiatives and any other measures that will result in cost savings to the state and will promote the other goals of the Sentencing Reform Act, including proportionality, justice, equality, public safety and rehabilitation.

The inability to provide sufficient incarceration options at the *local* level is undermining the goals of the Sentencing Reform Act. The Commission believes that the ability of local governments to estimate the cost of changes to the sentencing system needs to be improved, particularly in regard to the quantification of local jail costs. The Commission, along with the Washington Association of Sheriffs and Police Chiefs and the Department of Corrections, is engaged in a study of jail capacity, which is a first step towards establishing standards and a baseline for planning the use of limited local correctional resources. In addition to jail standards, the Commission believes a cost-benefit analysis of correctional options would be very instructive for local jurisdictions, whereby counties could discover how to optimize their limited resources in protecting public safety and in reducing recidivism. The public should be involved in that process so it can better understand the costs and methods of local corrections and thereby lend its support.

7) REDUCING THE RISK OF REOFFENDING

Reducing the risk of reoffending was added as a purpose of the Sentencing Reform Act with the enactment of the Offender Accountability Act in 1999. The notion of proportionality continues to dictate the duration of the punitive sanction, whether in jail, in prison or under supervision in the community, but the *content* of the sanction is now driven by the notion of *risk*. Risk is the criterion by which the Department of Corrections is to allocate its resources in

²⁶ See State of Washington, Caseload Forecast Council, *Inmate Population Forecast*, December 1999, which reported a 127 percent increase in the prison inmate population from 1989 to 1999, far exceeding the 22 percent increase in the state general population during that same time period. A sizeable portion of the increase in prison admissions during that period resulted from increased admissions for drug offenses and property offenses. See also Appendix A.

7) REDUCING THE RISK OF REOFFENDING (cont.)

supervising offenders. What was purely a sanction-based system before has now evolved into a system that balances “just deserts” with risk mitigation.

The concept of reducing risk implies some active attempt to lessen risk. In the Offender Accountability Act, risk refers to a range of factors and an instrument supported by research. Previous generations of risk assessment instruments were based on factors that were static, *i.e.*, they could not be changed, such as the age of the offender or the offender’s criminal record. The newer risk assessment instruments incorporate dynamic risk factors, *i.e.*, those variables that are statistically correlated with crime as a characteristic of the individual offender or their circumstance, which can be changed. Those dynamic factors become the basis upon which specific change interventions are identified and imposed. They are selected precisely because of their potential to mitigate risk. Conditions imposed as control and intervention activities applied to high-risk offenders take precedence over sanctions that are not related to risk.

The range of risk factors other than those identified in the instrument itself includes the nature of the harm done, the place and circumstance of the offender and the offender’s relationship to any victim. Attempts to mitigate these risks involve both crime-related prohibitions as well as the imposition of affirmative acts intended to change characteristics of the individual offender and his or her circumstances. Insofar as change interventions are directed at reducing risk they now are an explicit part of the Sentencing Reform Act. They now stand alongside other control strategies such as punishment and incapacitation.

Sentencing courts may now consider an offender’s risk of re-offending (as measured by an objective risk assessment tool) as part of the sentencing determination. However, questions remain as to whether factors related to risk could or should be built into the sentencing grid, and whether risk-related conditions imposed on offenders affect the proportionality and equity of the sentencing system. If judges are to consider risk as a factor influencing the sentencing determination, there is a question as to whether the standard sentence ranges should be widened to allow for more judicial discretion. The Commission will be closely following the implementation of the new regime in an attempt to address these issues.

COMMISSION WORKPLAN FOR 2000 AND BEYOND

In 1996, the Commission produced its first report assessing the state of sentencing practice in Washington. Following the conclusions of that report, a number of legislative changes were enacted, based on recommendations from the Commission, most notably the authority to impose affirmative conduct on offenders, with the passage of the Offender Accountability Act and the drug offender sentencing reform legislation. The Legislature also amended the stated purposes of the Sentencing Reform Act to focus on the need to reduce the risk of reoffending by offenders in the community and also on the need to make frugal use of local governments’ resources as well as state resources.

The issue of correctional capacity continues to be discussed by the Commission. The Commission is completing a series of studies of the capacity of state and local correctional

COMMISSION WORKPLAN FOR 2000 AND BEYOND (cont.)

facilities, which reveal a significant level of overcrowding in many facilities. To date, no legislative action has been taken to relieve the overcrowding, particularly on the local level.

As recommended by the Commission, the Legislature has also expanded the membership and the powers and duties of the Commission to reflect its new responsibilities for juvenile disposition standards and the need for representation by local government officials. A number of biennial research reports have also been mandated by the Legislature, including studies of adult and juvenile recidivism, studies of racial and ethnic disparities in adult sentencing and juvenile dispositions, and studies of the capacity of state and local correctional facilities for adults and juveniles.

In addition to its legislatively-mandated research studies, the Commission is required to make recommendations to the Legislature to revise or modify state sentencing policy and the criminal code. The Commission is directed to evaluate sentencing ranges and standards to ensure that they are consistent with and further the stated purposes of the Sentencing Reform Act, and also that they are consistent with correctional capacity.²⁷ To accomplish those directives, the Commission intends to pursue the issues identified in this report, and the Commission will also follow any directives from the Legislature enacted in the current and future legislative sessions.

²⁷ RCW 9.94A.040(2)(a), (b) and (c).

APPENDICES

APPENDIX A



STATE OF WASHINGTON CASELOAD FORECAST COUNCIL

515 15th Avenue SE, PO Box 40962, Olympia Washington 98504-0962 (360) 902-0089

January 31, 2000

TO: Interested Parties

FROM: David L. Fallen
Executive Director

RE: Impact of Criminal Justice Legislation on Washington State's Adult
Inmate Population

Attached is a summary of criminal justice legislation passed since the implementation of the Sentencing Reform Act in July 1984. The table briefly summarizes any legislation or initiative from 1986* to 1999 that had an impact on the adult inmate population. The chart graphically illustrates the expected impact of that legislation, but does not include the 1999 bills for technical reasons.

The following summary of criminal justice legislation was based on the impact analyses contained in the original fiscal notes for the bills. None of the impacts graphed on the attached chart takes into account changes in crime rates, demographic changes, or any other factor normally associated with a competent forecast. Therefore, the following analyses should be considered policy numbers only and, with one exception**, illustrate the expected impact at the time legislation was passed, not the actual impact of the legislation.

Please feel free to contact me if there are any questions.

*There was no legislation in 1985 affecting adult inmate populations.

**The estimated impact of removing the First-Time Offender Waiver for narcotics dealers was adjusted in 1990 to reflect the interaction with subsequent legislation which doubled the presumptive sentence for this crime.

CRIMINAL JUSTICE LEGISLATION WITH SIGNIFICANT PRISON IMPACT

Fiscal Years 1986 through 1999

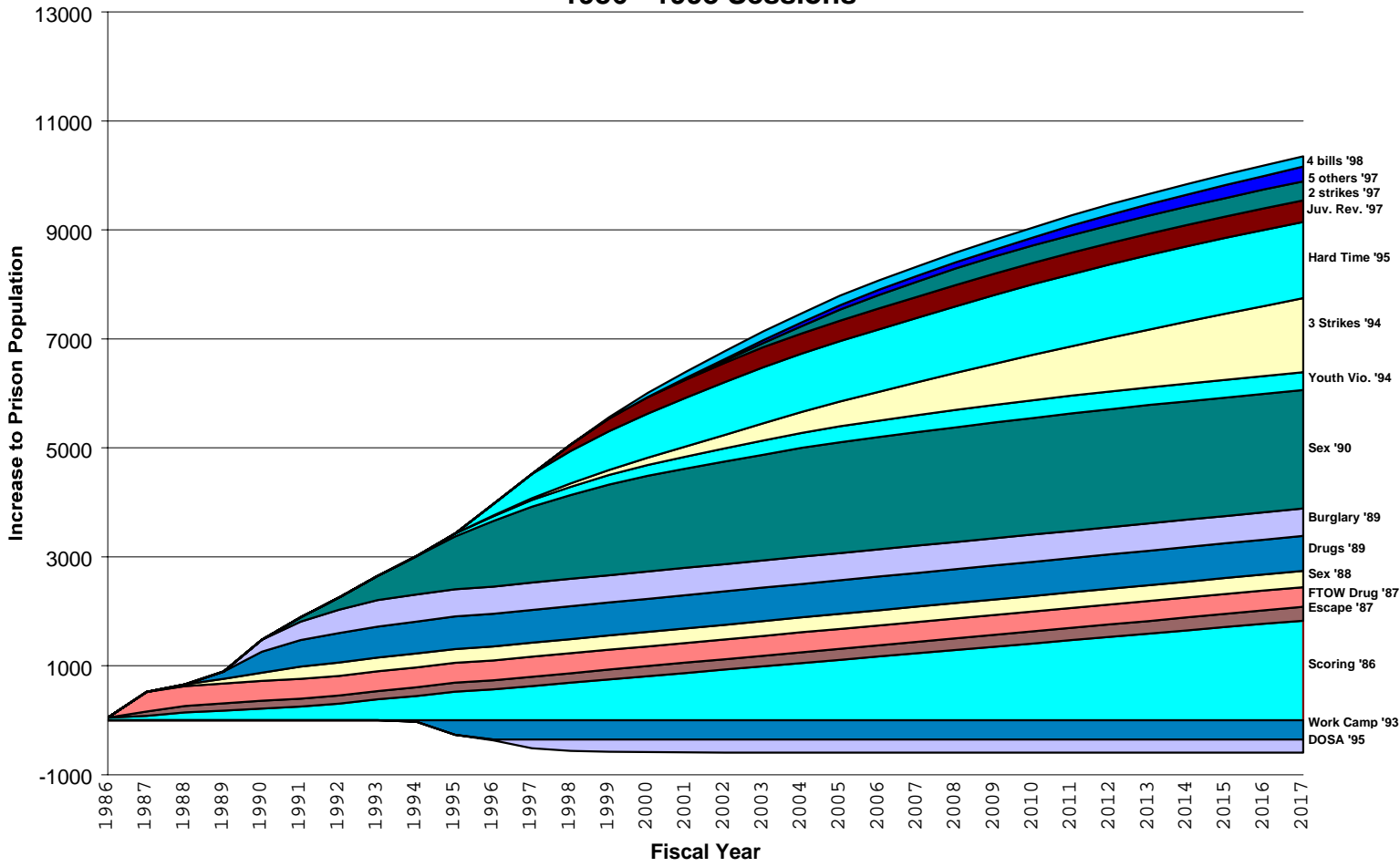
Note: This list is intended to briefly summarize legislation with significant prison impact. It is not a list of all significant criminal justice legislation, nor does this list necessarily include all important provisions of the legislation cited. Beginning in 1997, bills with a relatively small impact are included.

- | | |
|-----------------|---|
| SHB 1399 (1986) | <ul style="list-style-type: none">• Include all adult priors in the offender score (previously, prior offenses served concurrently counted as one offense).• Juvenile Class A adjudication's are always counted.• Count attempted offenses the same as completed offenses (both for scoring and weapon enhancement).• Clarified several definitions. |
| SHB 684 (1987) | <ul style="list-style-type: none">• All prior felonies score on current Escape I and II convictions (previously, only prior escapes were counted). |
| HB 1228 (1987) | <ul style="list-style-type: none">• Eliminated the First-Time Offender Waiver options for drug dealing. |
| SHB 1333 (1988) | <ul style="list-style-type: none">• Reclassified some sex offenses involving child victims, increased some of the penalties for these offenses, and created 2 new crimes involving older teenage victims. |
| SHB 1793 (1989) | <ul style="list-style-type: none">• Dealing heroin or cocaine moved to Seriousness Level VIII (from Level VI).• For drug offenses, prior adult drug convictions count 3 points and prior juvenile drug adjudications count 2 points (previously, 2 for adult and 1 for juvenile).• A 24 month enhancement was added for dealing narcotics in a school zone. |
| SB 5233 (1989) | <ul style="list-style-type: none">• Residential Burglary set as Seriousness Level IV (previously Level II).• Burglary of a non-residence set as Seriousness Level III (previously Level II). |
| SSB 6259 (1990) | <ul style="list-style-type: none">• Expanded the sentencing grid to 15 levels, and increased the standard range for Assault 1 and various sex offenses.• Reduced good time for serious violent and Class A sex offenses from 33 percent to 15 percent of the sentence.• Increased offender scores for sex offenses by counting prior sex offenses as 3 points.• Required consecutive sentences for two or more serious violent offenses. |

SSB 6259 (1990) (cont.)	<ul style="list-style-type: none"> • Increased the mandatory minimum term for Rape 1 from 3 years to 5 years. • Eliminated washout of juvenile sex offenses. • Prior violent juvenile offenses adjudicated on the same date now count separately if the offenses involved different victims. • Provides for a sexual motivation finding on any offense. • Created a process for civil commitment of certain sexual predators.
ESHB 1922 (1993)	<ul style="list-style-type: none"> • Provides a Work Ethic Camp of 120 - 180 days with 3-for-1 prison credit and community custody for the remaining time.
ESSHB 2319 (1994)	<ul style="list-style-type: none"> • Reckless Endangerment 1 set at Seriousness Level V (previously Level II) • Theft of a firearm created as a new felony at Seriousness Level V (previously charged as Theft 1 (Level II) or Theft 2 Level I). • Vehicular Homicide by intoxication raised to Seriousness Level IX. • 12 month deadly weapons enhancement extended to violent offenses not already eligible for an enhancement. • Adult criminal jurisdiction extended to 16-17 year old offenders for serious violent offenses or with violent offenses with certain criminal history.
I 593 (1994) (Initiative to the people)	<ul style="list-style-type: none"> • "3 Strikes You're Out" initiative provides for life sentences without parole for 3 separate convictions of "most serious offenses".
SHB 1549 (1995)	<ul style="list-style-type: none"> • Provides for in-prison substance abuse treatment for first-time narcotics dealers coupled with reduced prison terms and community custody.
I 159 (1995) (Initiative to the legislature)	<ul style="list-style-type: none"> • "Hard Time for Armed Crime" initiative increased penalties for armed crimes (especially firearms), extended the enhancements to all felonies, removed earned early release for the enhanced portion of the sentence, and required the enhancements to run consecutive to other sentence provisions. • Reckless Endangerment 1 re-ranked at Seriousness Level VII. • Unlawful Possession of a Firearm (Seriousness Level III) split into 1st degree (Level VII) and 2d degree (Level III). • Theft of a Firearm re-ranked to Seriousness Level VI. • Created Possession of a Stolen Firearm as a separate offense at Level V. • The definition of First Degree Burglary was changed to include residential burglaries committed while armed or with an assault.

- 3SHB 3900 (1997)
 - Automatic decline to adult court for 16 or 17 year old offenders who commit a violent offense.
 - Removes age limitation for using juvenile adjudications to calculate offender score in adult court.
 - Removes age limitation for using juvenile adjudication to bar usage of the First-Time Offender Waiver
- HB 1924 (1997)
 - Increases standard range for Rape 1 & 2, Rape of a Child 1 & 2, and Indecent Liberties with Forcible Compulsion.
- SB 5509 (1997)
 - Adds Rape of a Child 1, Child Molestation 1, Homicide by Abuse (with sexual motivation) , and Assault of a Child 1 (with sexual motivation) to the “two-strikes” list.
- SHB 1176 (1997)
 - Adds Rape of a Child 1 and 2 to the “two-strikes” list
- SB 5938 (1997)
 - Manslaughter 1 is added to the definition of “serious violent offenses”
 - Standard sentence increased for Manslaughter 1 & 2.
 - The top of the standard range for Murder 2 was raised.
- HB 2628 (1998)
 - Increase standard range for manufacture of methamphetamine.
- ESB 6139 (1998)
 - Increase standard range for manufacture, delivery, or possession with intent to deliver amphetamine.
- ESSB 6166 (1998)
 - Vehicular Homicide sentence enhanced by two years for each prior offense.
- ESB 5695 (1998)
 - Amendments to firearms enhancements
- E2SSB 5421 (1999)
 - Sex offender release triage.
- SSB 5011 (1999)
 - Mentally Ill offender release triage.
- HB1544A (1999)
 - Ranking of certain unranked offenses.
- HB 1006 (1999)
 - Changes to eligibility for Work Ethic Camp and the Drug Offender Sentencing Alternative.

This stacked area chart illustrates the cumulative increase in the prison population from 1986 to 2017, broken down by various programs and initiatives. The Y-axis represents the 'Increase to Prison Population' ranging from -1000 to 13000. The X-axis represents the 'Fiscal Year' from 1986 to 2017. The chart shows a significant overall increase in the prison population over the 31-year period, with the total increase reaching approximately 10,500 by 2017. The largest contributors to the increase are '4 bills '98' (dark blue), '5 others '97' (light blue), '2 strikes '97' (dark red), and 'Juv. Rev. '97' (red). Other notable contributors include 'Hard Time '95' (cyan), '3 Strikes '94' (yellow), 'Youth Vio. '94' (light green), 'Sex '90' (dark green), 'Burglary '89' (purple), 'Drugs '89' (dark blue), 'Sex '88' (light blue), 'FTOW Drug '87' (red), 'Escape '87' (brown), 'Scoring '86' (cyan), 'Work Camp '93' (dark blue), and 'DOSA '95' (purple).



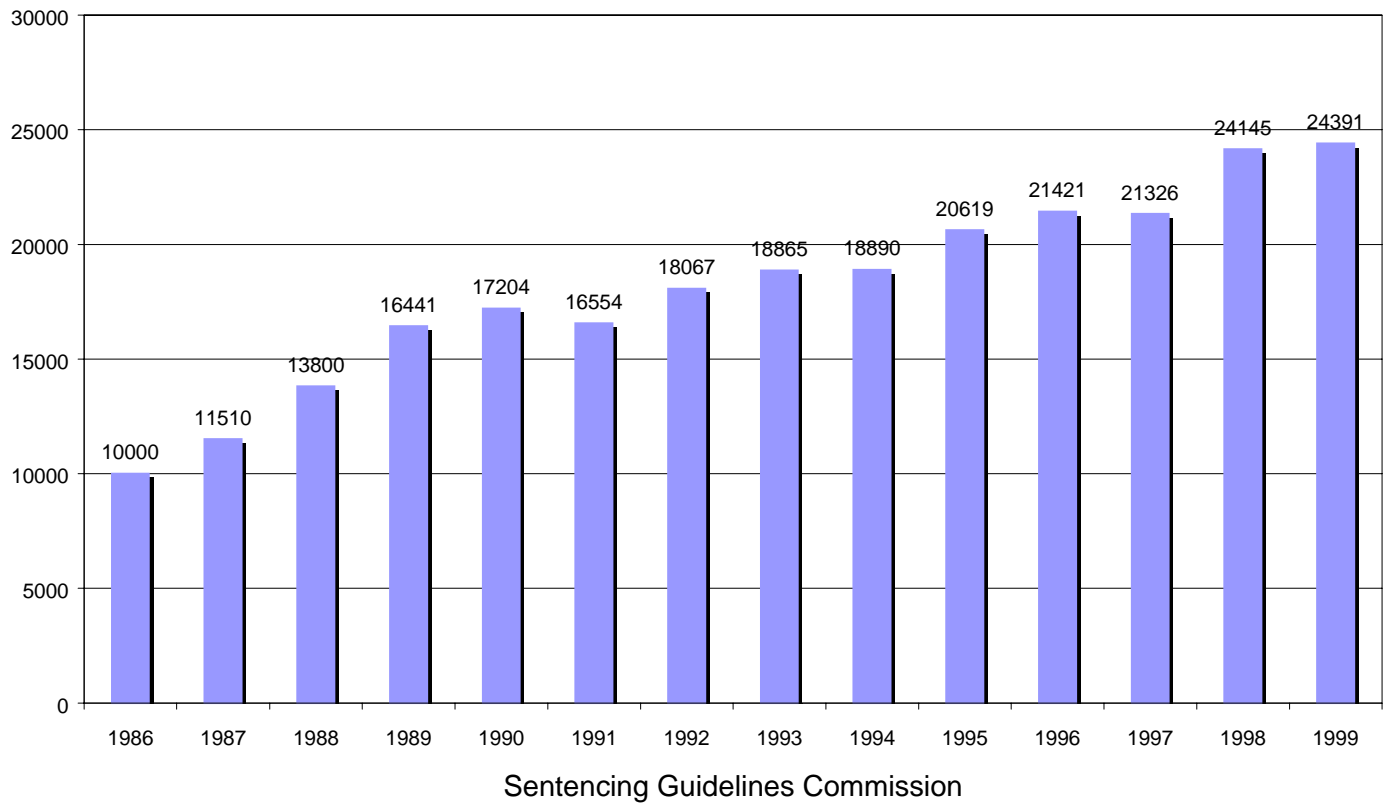
APPENDIX B

Adult Felony Sentencing Trends Under the Sentencing Reform Act Fiscal Years 1986 – 1999

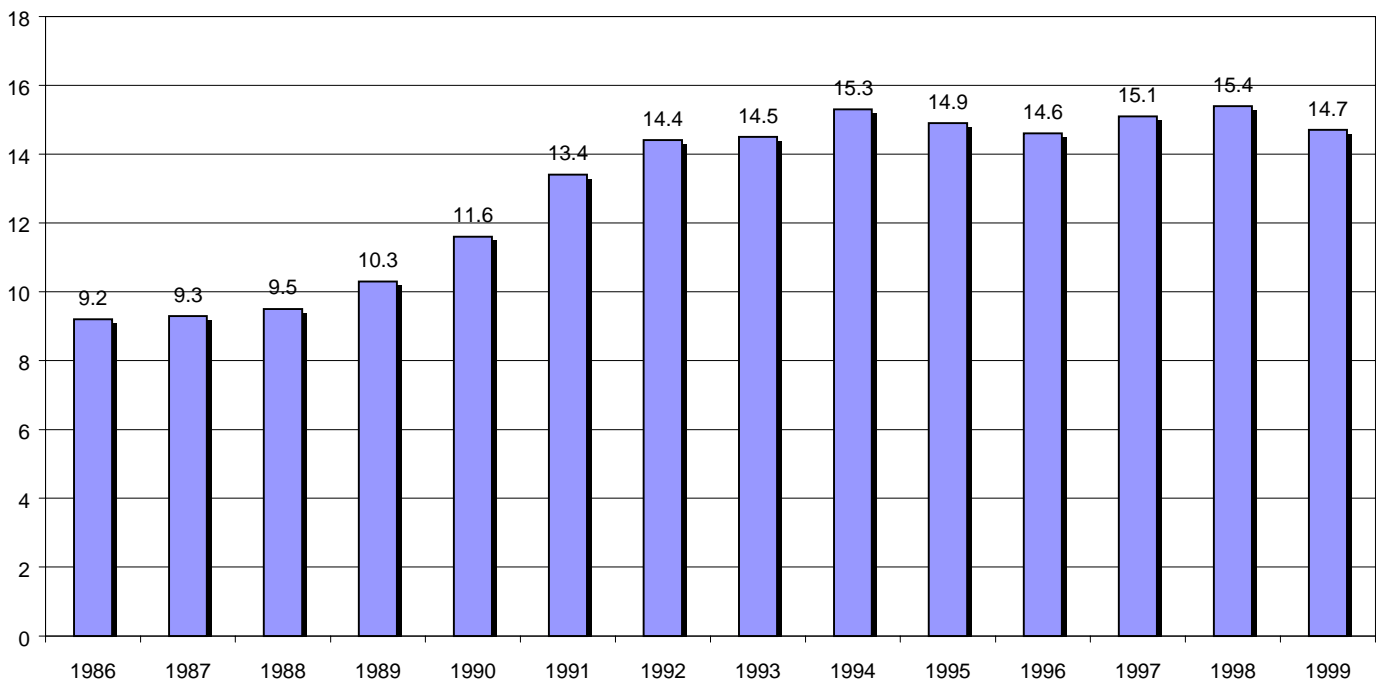


**STATE OF WASHINGTON
SENTENCING GUIDELINES COMMISSION**

SRA Sentences, by Fiscal Year

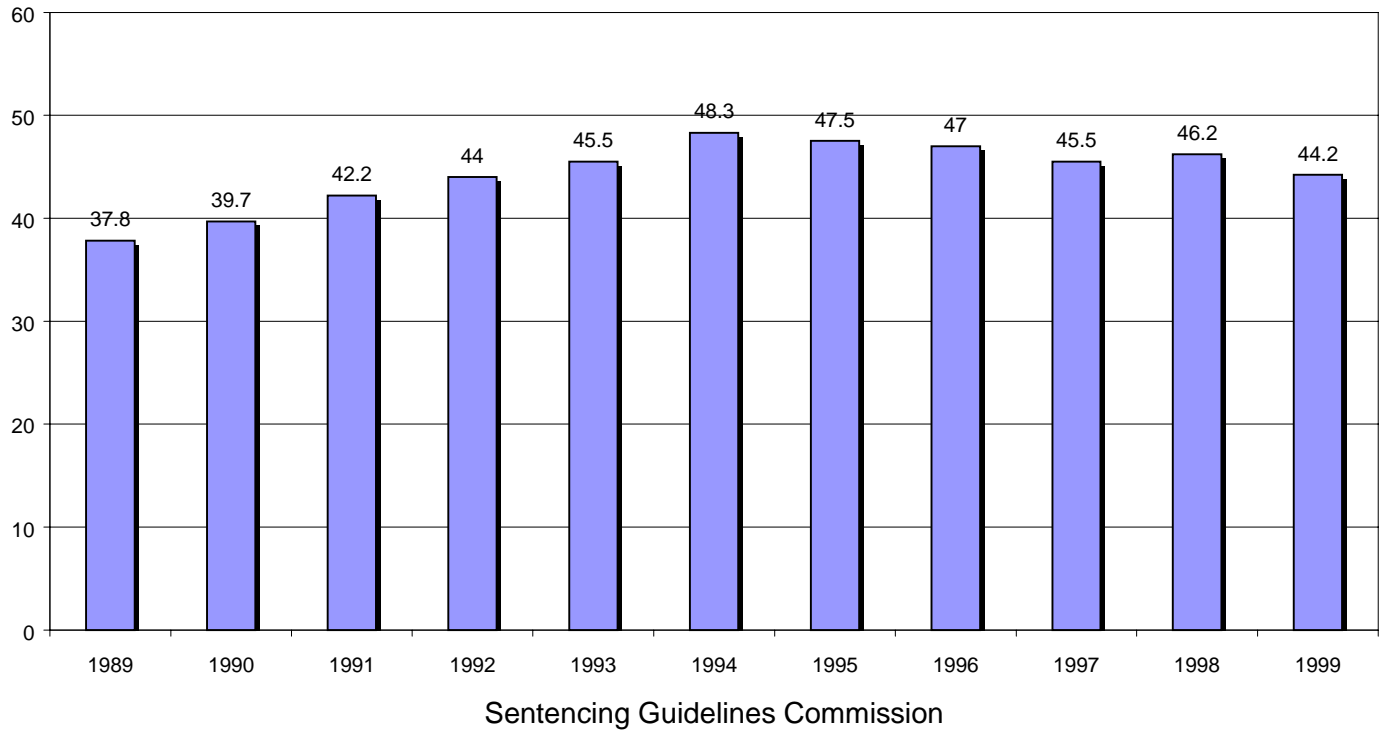


Average SRA Sentence Length, by Fiscal Year (in months)

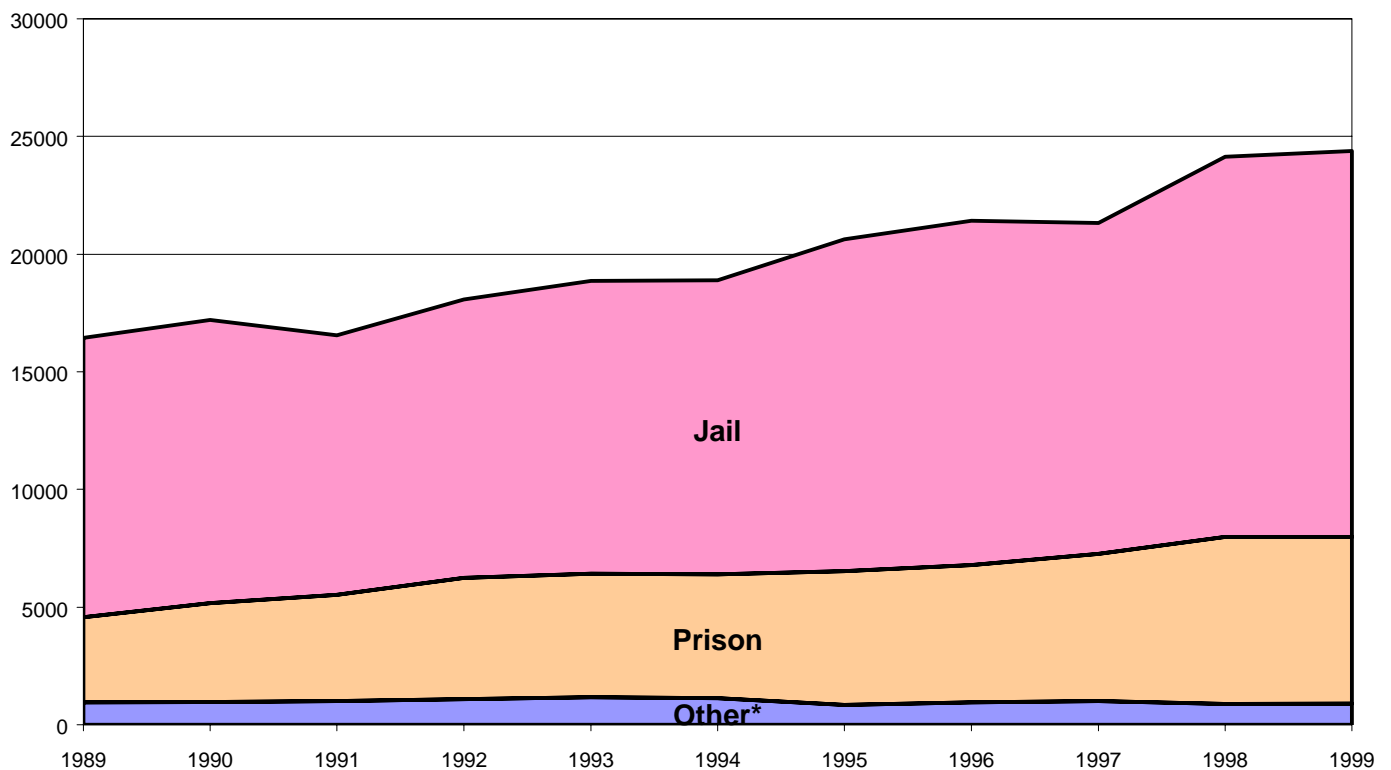


Sentencing Guidelines Commission

Average SRA Prison Sentence Length, by Fiscal Year (in months)



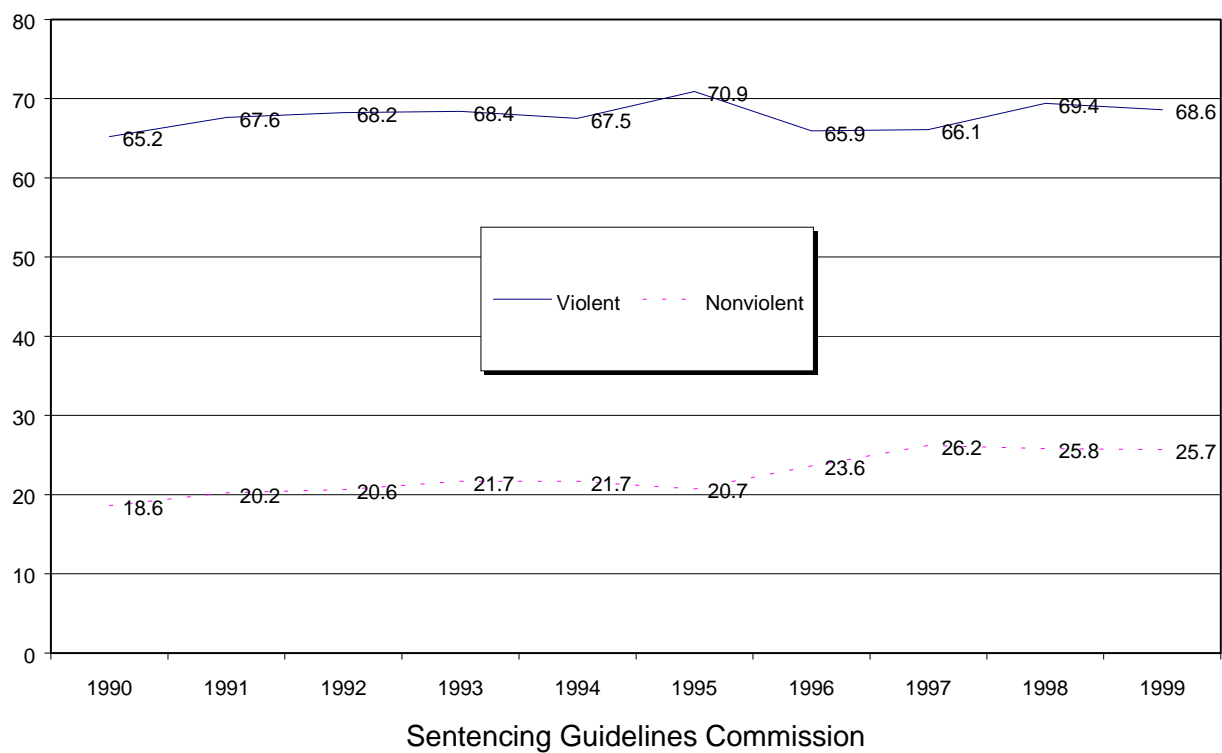
SRA Sentences, by Disposition



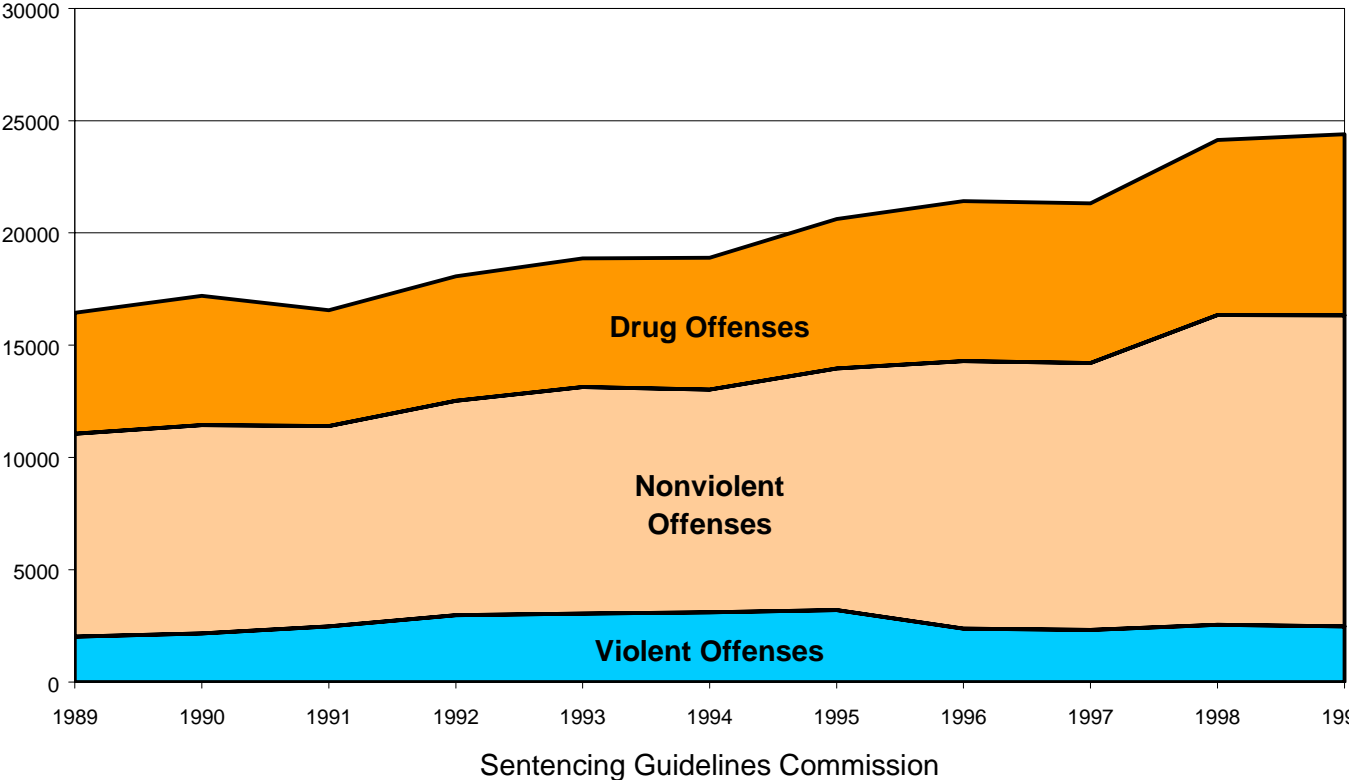
Sentencing Guidelines Commission

* "Other" sentences do not include confinement, but could include community service, fines, treatment and community supervision.

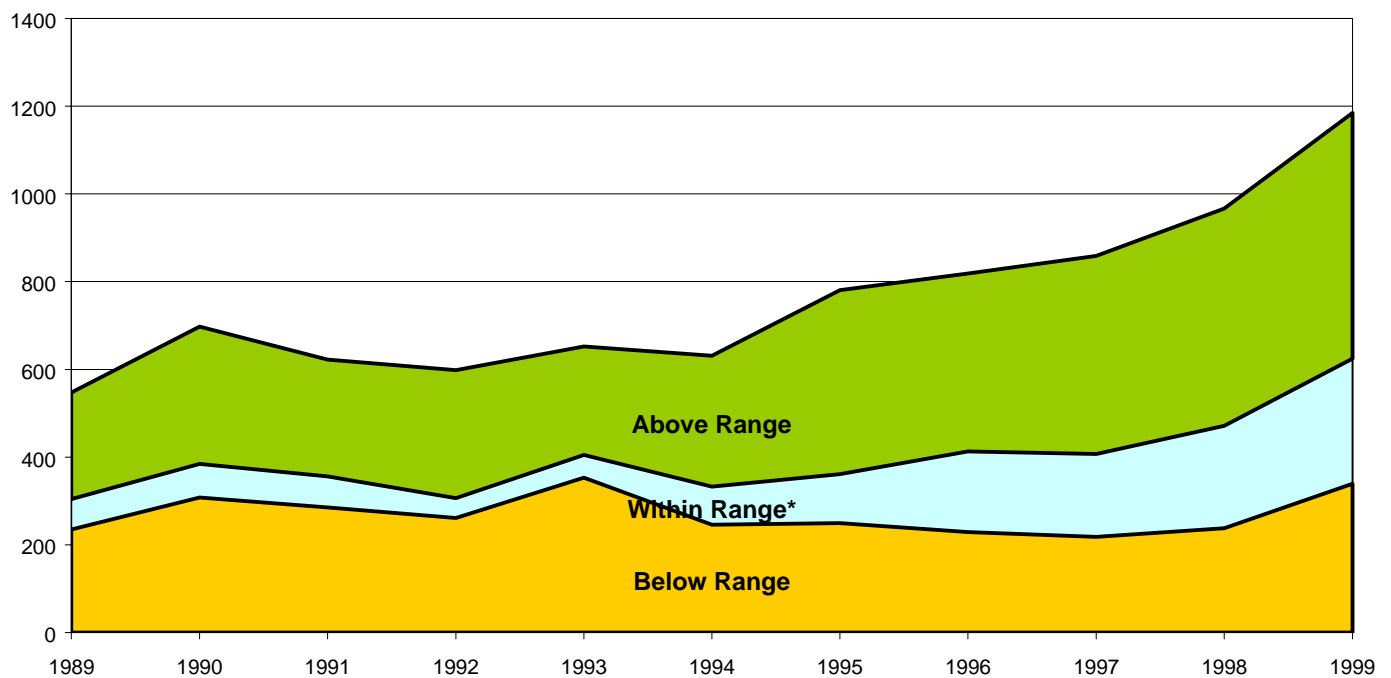
SRA Sentences to Prison for Violent and Nonviolent Offenses (percentages)



SRA Sentences, by Offense Type



SRA Exceptional Sentences, by Type



Sentencing Guidelines Commission

* Exceptional sentences within the standard range are used to provide sentence conditions not otherwise permitted (e.g., lengthy community supervision).